

2:23-cr-00066-JAD-DJA - April 24, 2023

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 2:23-cr-00066-JAD-DJA
5 vs.) Las Vegas, Nevada
6 MATTHEW WADE BEASLEY,) April 24, 2023
7 Defendant.) 3:12 p.m. - 4:07 p.m.
8) Courtroom 6D
9) DETENTION HEARING
10) **CERTIFIED COPY**

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE JENNIFER A. DORSEY
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Government: **ERIC C. SCHMALE, AUSA**
16 **DANIEL SCHIESS, AUSA**
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21 (Appearances continued on page 2.)

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UNITED STATES DISTRICT COURT
Amber McClane, RPR, CRR, CCR #914

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1 APPEARANCES CONTINUED:

2 For the Defendant:

3 **JACQUELINE M. TIRINNANZI, ESQ.**
4 TIRINNANZI LAW PLLC
5 2370 Corporate Circle, Suite 190
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6 Also Present:

7 *Erin Oliver, Pretrial Services*

8 * * * * *

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1 LAS VEGAS, NEVADA; MONDAY, APRIL 24, 2023; 3:12 P.M.

2 --o0o--

3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** This is the time set for a
5 motion hearing in Case 2:23-cr-66-JAD-DJA, United States of
6 America versus Matthew Wade Beasley.

7 Please make your appearances for the record.

8 **MR. SCHMALE:** Good afternoon, Your Honor. Eric
9 Schmale and Dan Schiess appearing for the Government.

10 **MS. TIRINNANZI:** Good afternoon, Your Honor.
11 Jacqueline Tirinnanzi on behalf of Matthew Beasley.

12 **THE COURT:** All right. Good afternoon.

13 We're here on the Government's motion for review of
14 the magistrate judge's order granting pretrial release to the
15 defendant, Mr. Beasley. The motion for review of that release
16 order is Number 11 in the docket. The release order was
17 stayed pending my ruling on this motion.

18 I've reviewed the parties' filings, and I listened to
19 the recording of the detention hearing that was conducted on
20 April 7th. And I promptly scheduled this hearing as required
21 by Title 18 United States Code § 3145. I will be reviewing
22 the magistrate judge's release order *de novo*.

23 And I'm ready to hear argument, and so I will start
24 with the Government. Mr. Schmale.

25 **MR. SCHMALE:** Thank you, Your Honor.

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1 Just as a preliminary matter, the Government would
2 like to request that Docket Entry 11-1, the attachment to our
3 motion, be sealed.

4 **THE COURT:** It's already -- it was filed unsealed.
5 Yes?

6 **MR. SCHMALE:** Yeah. We're requesting temporary
7 sealing. Defense counsel approached us before this hearing
8 and requested that certain information be redacted out of it.
9 And in order to give us time to do so, we would request that
10 it be temporarily sealed.

11 **THE COURT:** I guess my question is, considering that
12 it was filed more than a week ago on the open docket, what
13 good does it do to seal it right now when it's been publicly
14 accessible? How does -- how does that satisfy the standards
15 for sealing?

16 **MR. SCHMALE:** Well, Your Honor, perhaps I would let
17 defense counsel address that since they requested it be
18 sealed?

19 **THE COURT:** Thank you.

20 Ms. Tirinnanzi.

21 **MS. TIRINNANZI:** Thank you, Your Honor.

22 It was brought to my attention today when the
23 supplements -- the supplemental exhibits, B and C, were filed;
24 that in Exhibit B a certain individual's name with relation to
25 cooperation was redacted, and then in preparation for the

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1 hearing I noticed that Exhibit A, which was initially filed as
2 an attachment to Docket Entry 11, that name and specifics
3 regarding that name were not redacted. And so I didn't want
4 to bring more attention to the fact that such sensitive
5 information was out there, and really it came to my attention
6 today when that same name was redacted on other exhibits that
7 were filed supplementally.

8 **THE COURT:** Is there a single page that's the
9 concern?

10 **MS. TIRINNANZI:** Yes, Your Honor. It's pages 15 and
11 16 of the actual transcripts.

12 **THE COURT:** Transcript page 15 and 16, not docket
13 page Number 15 and 16? I say that --

14 **MS. TIRINNANZI:** Yes, Your Honor.

15 **THE COURT:** -- because these transcript pages are --
16 are -- it's one of those minis, and so it's four per page.

17 **MS. TIRINNANZI:** That's correct. So for the mini --
18 the mini pages, pages 15 and 16, which looks like page 16 of
19 40 on the exhibit itself.

20 **THE COURT:** All right. So for that reason I -- what
21 I will do is I will allow -- I'll order that the Document 11-1
22 be sealed for now with the request that -- that tomorrow the
23 parties file a redacted version that unseals everything except
24 for page 16.

25 **MS. TIRINNANZI:** Thank you, Your Honor.

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1 **THE COURT:** All right. Then, Mr. Schmale, that
2 leaves oral argument for you.

3 **MR. SCHMALE:** Thank you, Your Honor. I'll argue it
4 from the podium, if that's permissible?

5 **THE COURT:** Please.

6 **MR. SCHMALE:** Thank you, Your Honor.

7 I will be brief, and I want to focus on responding to
8 arguments in the defendant's briefing. I will not simply
9 recount arguments from our brief unless the Court requests
10 otherwise or requests clarification.

11 **THE COURT:** How refreshing.

12 **MR. SCHMALE:** The core argument of the defendant's
13 brief is that the defendant is not a flight risk or a danger
14 to the community because he was being, quote, reasonable when
15 he pulled a gun on FBI agents and engaged in a suicidal
16 four-hour armed standoff. And specifically on page 11 of the
17 defendant's brief they state, quote, Mr. Beasley's actions on
18 March 3rd, 2022 -- that's the date of the armed standoff --
19 although not typical, are reasonable. He claims he was being
20 reasonable by pulling a gun on the FBI and engaging in a
21 standoff in which he repeatedly threatened to commit suicide.
22 That is not reasonable and shows he is both a flight risk and
23 a danger, particularly the fact that he's continuing to argue
24 that is reasonable today.

25 He argues it was reasonable to engage in these

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1 actions claiming that they were -- they were really caused by
2 the actions of the FBI agents who simply walked up to the door
3 of the house and knocked on it to talk to him. And the
4 Supreme Court and the Ninth Circuit have both recognized that
5 it's perfectly fine for law enforcement to engage in
6 knock-and-talks where the officer knocks on someone's door and
7 asks questions. That's plainly shown by the case law, even
8 the ones that the defendant cited.

9 But it was the defendant who answered the door
10 holding a gun to his head and engaged in the standoff.

11 And the defendant's brief also tries to argue it was
12 reasonable that an individual may mistake law enforcement,
13 quote, for an invasion and reasonably take defensive measures
14 to protect himself. But the defendant here didn't mistake law
15 enforcement for anyone. He only showed the gun he was holding
16 to his head after an FBI agent showed his badge. So --

17 **THE COURT:** And just so I'm clear, because the way
18 that the parties portray this situation is different, was the
19 door open? Was -- who opened the door? Do we have those
20 details at this point?

21 **MR. SCHMALE:** So it's my understanding -- I mean,
22 there's some argument over I think the meaning of the word
23 door here as well. Because there is an external what was
24 described by the Government as a gate to the house because it
25 is not a door into the inside of the house. It is an external

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1 gate into a courtyard. I believe the defendant represents
2 that that is actually a door because it is attached to a wall
3 on the outside of the house. But that -- I believe by all
4 accounts that -- what I will continue to call a gate was
5 unlocked, and the FBI agents simply pushed it open and walked
6 through it and then approached the front door of the house
7 where they knocked on the door into the house. At that point
8 I don't believe that door ever was opened because the
9 defendant appeared on the other side of it with the gun, and
10 after pointing it in a sweeping motion towards the agents, the
11 agents fired their weapons in self-defense through the glass
12 door striking the defendant.

13 **THE COURT:** So the agents observed this conduct
14 through the glass in a closed front door?

15 **MR. SCHMALE:** That's correct.

16 **THE COURT:** You may continue. Thank you.

17 **MR. SCHMALE:** Thank you.

18 So when the FBI agents showed up that day, this was
19 not a surprise to the defendant. He had been running a nearly
20 half-billion-dollar Ponzi scheme for years, and he knew it
21 would all come crashing down one day, which is why the
22 defendant had previously written a letter to the FBI, which
23 was filed with the Court earlier today and marked as Exhibit
24 B. The letter was found in an envelope marked FBI, and it was
25 referenced by the defendant in his call with the crisis

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1 negotiator. In that letter the defendant claimed, much as he
2 did in the -- the crisis negotiator transcript, that he was
3 the only one responsible for, quote, this entire mess. He
4 called himself a liar, a horrible human being. He said he
5 realized he had gone, quote, too far in to ever recover, and
6 that he was just trying to get his family what he thought they
7 deserved, quote, before it all came to an end. And he had
8 been warned earlier that day that the FBI was executing search
9 warrants on his associates.

10 So here it was all coming to an end as the defendant
11 himself knew what happened. And what was his reaction? Well,
12 when the FBI showed up at his door, he pulled a gun, he had it
13 pointed at his head, he threatened to kill the -- he
14 threatened to kill himself, excuse me, and engaged in a
15 four-hour armed standoff, which the defendant to this day is
16 still claiming was reasonable.

17 A defendant who thinks it is reasonable to pull a gun
18 on FBI agents and engage in a four-hour armed standoff is a
19 danger to the community and a flight risk.

20 And there really is little to suggest that the
21 defendant's mental health is really all that different from
22 that day. And really this is confirmed by the prison medical
23 records submitted by the defendant with the response brief,
24 and these are -- these are selective prison medical records
25 from what I understand. We don't know what is in the records

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1 that were not submitted. But just looking at the records that
2 were submitted, we see that in October 2022 the defendant's
3 psychiatrist described him as, quote, a train wreck who is,
4 quote, fine one minute and crying the next and there is no
5 particular thing he is crying about.

6 This is despite the fact that the defendant is on a
7 prescription anti-depressant, and in another psychiatrist
8 report he -- the defendant reported, quote, feeling depressed,
9 experiencing mood swings, and explaining "I'm fine" and then
10 in tears. And this -- this is on ECF 16-3, pages 7 and 8.

11 He also reported that he was -- had been, quote,
12 getting angry with his ex-wife and said that he will, quote,
13 explode at her at moments.

14 In November 2022, another mental health professional
15 noted that the defendant was, quote, tearful while discussing
16 family stressors and emotional about his, quote, ex-wife
17 telling him to stop communicating with her.

18 Now, in the psychologist's reports, this is
19 attributed to I believe unresolved stressors which would
20 presumably include his indictment for running this nearly
21 half-billion-dollar Ponzi scheme. And the sentencing
22 guidelines suggest that these stressors would only be resolved
23 with the defendant serving a lifetime prison sentence.

24 And this is a man who has already pulled a gun on FBI
25 agents and threatened suicide in an armed standoff, and here

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1 we are one year later and he's arguing not only is that
2 reasonable but he's also submitting psychiatrist reports
3 calling him a train wreck who is fine one minute and crying
4 the next and who will explode with anger towards his ex-wife.
5 So this mental health evidence confirms that the defendant is
6 both a flight risk and a danger to the community.

7 To try to show that he is not a flight risk, the
8 defendant submitted a declaration from Geoff Winkler who is
9 the receiver responsible for recovering assets for the victims
10 in the Ponzi scheme. Mr. Winkler is present in court today,
11 along with his counsel, Kyle Ewing.

12 So to ensure the Court is dealing with complete
13 information, the Government obtained a supplemental
14 declaration from Mr. Winkler which was filed with the Court
15 this morning and marked as Exhibit C., and that -- that
16 declaration clarifies a few points relevant to the detention
17 hearing.

18 **THE COURT:** For the record, it's Document
19 Number 21 --

20 **MR. SCHMALE:** Thank you, Your Honor.

21 **THE COURT:** -- dash 2.

22 **MR. SCHMALE:** In that declaration, Mr. Winkler's
23 clear that there's no advantage to his work if the defendant
24 is released and that the defendant has been able to provide
25 adequate assistance while incarcerated. Mr. Winkler also has

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1 concerns that victim funds are being used for the defendant's
2 benefit even while he's in prison. Specifically, victim funds
3 have been used to pay for Mr. Beasley's retained psychological
4 expert that was submitted in an earlier effort for him to --
5 to secure his release in June of 2022, and that report was
6 also attached here to defendant's response as Exhibit 2.

7 And separately, in the SEC case -- this is not in the
8 declaration, but this appears on the SEC docket -- the
9 defendant's ex-wife admitted to selling a Ferrari for over
10 \$55,000 and that half of that went to the defendant's then
11 defense attorney for his legal representation.

12 So this dissipation of victim assets that were seen
13 even while the defendant is in custody would presumably only
14 be a bigger threat if the defendant were released.

15 Similarly, the defendant told Mr. Winkler that he had
16 approximately \$500,000 in cash at his home on the date of the
17 armed standoff with the FBI. The FBI was only able to recover
18 a little over \$200,000 in cash. So where is that potentially
19 missing \$300,000?

20 Well, on the morning of March 3rd, after -- while the
21 search warrants were being executed on the defendant's
22 associates but before the FBI or agents had arrived at the
23 defendant's home, the defendant's adult son was seen by the
24 FBI at the defendant's home loading two bags into the trunk of
25 an Aston Martin vehicle and leaving the home. It's possible

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1 that the \$300,000 was in those bags. But even that \$300,000
2 is small compared to the \$7- to \$10 million that Mr. Winkler
3 estimates the defendant personally obtained from the Ponzi
4 scheme that is unaccounted for.

5 So this raises serious questions that, if Mr. Beasley
6 were released from prison, he would have access to \$7- to
7 \$10 million of victim money, which could be used either to
8 flee from prosecution or could simply be used to dissipate the
9 money and prevent its recovery for investors.

10 So in sum, to sum this up, the defendant still
11 believes here a year later that it was, quote, reasonable to
12 engage in a suicidal armed standoff with the FBI. His mental
13 health is described as a train wreck, and if he's released, he
14 may have access to \$7- to \$10 million in unaccounted for
15 victim money. For these reasons, and as well as the reasons
16 in the Government's original brief, he remains both a flight
17 risk and a danger to the community and the Government requests
18 he be detained.

19 **THE COURT:** How do you respond to the argument which
20 I think is the suggestion in defense counsel's brief that the
21 circumstances of the FBI standoff and FBI visit to -- to the
22 home suggests an illegality that might impact the strength of
23 the Government's case when I take that into consideration as I
24 must under the statutory factors?

25 **MR. SCHMALE:** Yes.

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1 **THE COURT:** And not to prejudge -- I want to make it
2 clear, in no way will I be prejudging any potential
3 suppression motion. I'm only addressing this with respect to
4 the factors.

5 **MR. SCHMALE:** Yes. Thank you, Your Honor.

6 First, there's -- you know, our brief points to
7 the -- there's a lot of -- there's overwhelming other evidence
8 that the defendant committed this crime. So the Government is
9 not relying on the confession to prove this crime, and it
10 could be proved without that confession.

11 Second of all, this is not the only time that the
12 defendant has confessed. We see it in not only the crisis
13 negotiator transcript, we see it in the letter that was
14 recovered. The defendant made statements to the Washington
15 Post, and the defendant has made other statements to law
16 enforcement. We focused on the -- the transcript here that we
17 provided because that is -- it's in transcript form, and I
18 believe it was publicly available even before this, and it's
19 all very clear and very detailed there.

20 I mean, in defendant's briefing, even as they argue
21 it, don't -- does not argue that it should be addressed as
22 relevant to the factors here. It appears in a section of the
23 brief titled "Other Considerations." What's relevant here
24 today is what the defendant did. It's what the defendant did
25 that day that shows he is a flight risk, that shows he is a

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1 danger to the community completely apart from the -- the
2 contents of the confession as they go to the merits of the
3 case.

4 **THE COURT:** Thank you, Mr. Schmale. I'll bring you
5 back up for rebuttal after I hear from defense counsel.

6 **MR. SCHMALE:** Thank you, Your Honor. I appreciate
7 it.

8 **MS. TIRINNANZI:** Your Honor, may I argue from here?

9 **THE COURT:** You may.

10 **MS. TIRINNANZI:** I've made a bit of a mess, once
11 again. Thank you.

12 Your Honor, we are going to respectfully request
13 release with conditions which is in agreement with Pretrial
14 Services and, of course, the magistrate's decision despite
15 this being a *de novo* hearing.

16 The law requires you consider the 3142(g) factors in
17 determining whether there are conditions of release that will
18 reasonably assure my client's appearance and safety of any
19 person and community, which the law also requires the least
20 restrictive conditions for that release.

21 I have a wealth of evidence that relates directly to
22 the 3142(g) factors that prove that release conditions are --
23 they would provide a reasonable assurance, which is all that's
24 required under the law.

25 And so really today the Government is not carrying

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1 its burden of proving by clear and convincing evidence that no
2 conditions will reasonably assure appearance and safety.

3 I'd like to move -- I know that this was touched on
4 in the briefing, so I'll just be quick unless you have
5 questions. But I do want to address them.

6 **THE COURT:** Please.

7 **MS. TIRINNANZI:** As far as the history and
8 characteristics of Mr. Beasley, he has been in Las Vegas since
9 2004. He has strong ties to the community. The only other
10 place he lived before this was the Midwest, like Kansas and
11 Missouri area, where he grew up and went to school. He has
12 family here. His parents are here. They're actually in court
13 here today, Violet and Wayne. And they have offered a stable
14 home for him to live in. He's also needed in that home
15 because Violet is a breast cancer survivor, and that condition
16 has made her more frail. And on top of that, she has
17 degenerative disk disease and can basically only stand for
18 about 30 seconds at a time. So Mr. Beasley's help is greatly
19 needed in the home because Wayne still works in the capacity
20 as an engineer by day. And so any help that he can aid in
21 that home is needed. And, again, that reinforces -- you know,
22 it gives Mr. Beasley stability and support.

23 In addition, he has other family here. His sons, he
24 has minor sons here, and he still has joint legal custody over
25 them. He wishes to continue a relationship with them. Last

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1 week his oldest son actually gave birth to his first -- well,
2 his partner gave birth to their first child. So Mr. Beasley
3 is now a grandfather as of last Wednesday, and that has had a
4 tremendous impact on his life outlook.

5 And in addition, he has never owned a passport. He
6 has never left the country. He has no desire for
7 international travel.

8 He has no financial resources. There was an asset
9 freeze, and although the Government submitted a declaration
10 from the receiver in the SEC action, we also obtained a
11 declaration previously that explained there was a preliminary
12 injunction and asset freeze in the SEC case and that he has
13 continued to cooperate with the receiver to -- in his efforts,
14 and then also with obtaining assets related to potential
15 third-party recovery assets.

16 And as I mentioned in my response, there are between
17 20 and 30 other SEC defendants in the SEC case. Mr. Beasley
18 is the only individual indicted in the criminal case, but
19 there are many, many other parties that were involved in the
20 alleged scheme. So to attribute, you know, any -- any
21 finances or assets that are missing, to put all of that onto
22 Mr. Beasley is not exactly accurate and also a better -- it's
23 a better issue for a finder of fact and for us to address when
24 we move with -- forward with the case. At this time we don't
25 have any discovery either.

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1 But the fact that we have a declaration that
2 Mr. Beasley has been cooperating thus far shows his intentions
3 to assist and that he is not -- he does not have access to
4 funds to -- to flee or -- I mean, whatever the concern is.

5 Additionally, Mr. Beasley has no history of drug or
6 alcohol abuse. And as far as the suicide issue is concerned,
7 we don't believe that that is a relevant factor when assessing
8 serious risk of flight or serious risk that he will obstruct
9 justice, threaten, injure, intimidate prospective witnesses or
10 jurors. That does not meet the standard. That is not
11 relevant.

12 Now, I -- without conceding that we don't believe
13 it's relevant, we have information that supports he is not
14 suicidal. We have the attached evaluation from the
15 psychologist. We have repeated conclusory findings from
16 Nevada Southern Detention Center saying that he is not
17 suicidal, he is not at risk. There have been no incidents
18 while he was there. And we do attach in those records that
19 the Government mentioned a few comments about Mr. Beasley
20 being upset. There is also notes that he has PTSD from when
21 he was shot by the FBI in his own home. So he's been detained
22 there for the past 14 months on a charge that was ultimately
23 dropped as well. So that is cause for some distress.

24 Going back just to the 3142(g) factors, he has no
25 criminal history. This is not a presumption case. There

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1 is -- we have -- the Government is relying on statements that
2 were made to an FBI negotiator during an alleged four-hour
3 standoff. Again, that case was dismissed. And we have only
4 seen -- we never had an opportunity to assess the evidence in
5 that case. We've just seen various cherry-picked excerpts,
6 but we did not see anything along the lines of a call to 911
7 which happened multiple times before those calls were rerouted
8 to a crisis -- FBI crisis negotiator who has all the control
9 in that scenario anyways as Mr. Beasley is laying on the floor
10 of his own home bleeding out and he had attempted to ask for
11 help. So statements that are made in -- in that context,
12 I'm -- we never said -- you know, we're not -- to clarify,
13 we're not alleging that Mr. Beasley was reasonable in -- when
14 he pointed a gun at the FBI because we don't believe that. We
15 dispute the entire facts of that day.

16 In our response I do show the front door which has --
17 it locks. It's not a half gate as the Government continues to
18 refer to it. It's a full door. It has a doorbell. And by
19 the Government's own admission, in the complaint for the
20 assault on the -- for the assault on the federal officer
21 charges -- which, again, were dropped -- they state that the
22 FBI rang the Ring and then pushed their way through and
23 continued into his home. And we also dispute what happened
24 there. But at the same time, we haven't had the opportunity
25 to fully analyze what happened other than the fact that the

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1 case was dismissed before we had the opportunity to move
2 forward with the preliminary hearing.

3 As far as -- going back to the issue of suicide, I
4 would just like to, again, emphasize the fact that those --
5 those are trained, licensed mental health professionals, a
6 psychologist and a psychiatrist, making these judgments as
7 opposed to, you know, nonmedical professionals. We're all
8 just attorneys here. So I don't -- those -- anything that the
9 Government is offering to show that Mr. Beasley is suicidal is
10 not factual and it's not supported in anything scientific.

11 Additionally, as to the declaration from the receiver
12 that was submitted today, none of the Government's -- nothing
13 in what the Government sets forth in that declaration states
14 that Mr. Beasley has not been cooperative. Mr. Beasley was
15 the individual who informed the receiver that there had been
16 \$500,000 in cash at his home, which the receiver states only
17 around 200-something was recovered, nearly \$300,000 is
18 unaccounted for. Well, Mr. Beasley hasn't been back to his
19 home since the day that he was shot in his home. So he was
20 forthcoming with the fact that that money was most likely
21 there. So nothing in that declaration really shows that
22 Mr. Beasley has been anything but cooperative. And also, keep
23 in mind that, under the SEC action, there are over -- you
24 know, dozens of other parties that are named defendants in
25 that case.

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1 Again, also that declaration points out issues that
2 have to do with Mr. Beasley's ex-wife who is represented by
3 her own counsel. The decisions that they are making, we --
4 we're not -- we're not privy to that. I don't -- we don't
5 know what is going on, and that should not be a basis to
6 continue to detain Mr. Beasley, especially when we have a
7 declaration stating otherwise on the same issue.

8 Also, I would like to add that there's a statement
9 that there are numerous investors concerned, you know, that
10 Mr. Beasley may present a danger. We don't know who these
11 individuals are. That's a conclusory statement. There's
12 nothing factual there. The Government's not putting on
13 witnesses. We don't know who they are, what bias they may
14 have. Again, there are dozens of other parties named in the
15 SEC action that benefit, really, to state that of course
16 Mr. Beasley is a problem. But we don't know how or who's
17 saying this or anything like that. There's no basis for us to
18 go by. Mind you, a neutral third party, Pretrial Services, is
19 stating that Mr. Beasley is not a danger and they don't have
20 concerns and that there are conditions that can accommodate
21 him.

22 Finally, I would also like to address the other
23 supplement -- the other supplemental exhibit that the
24 Government set forth today, Mr. Beasley's note to the FBI.
25 I'm assuming that is meant to go towards the weight of the

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1 evidence which is the least important factor to be considered
2 for release. But as far as Mr. Beasley's note to the FBI,
3 we're aware of existence -- the existence of evidence to the
4 contrary that is material to the statements being set forth in
5 that note. So really that note is taken out of context. We
6 haven't had the ability to look at any other evidence, and
7 it's really more suitable for a finder of fact, not for a
8 detention hearing to determine if Mr. Beasley is a serious
9 risk of flight or a serious risk of obstructing justice or
10 threatening, injuring, intimidating prospective witnesses or
11 jurors.

12 Oh. And then also, Your Honor, there were statements
13 that were made with regard to funds being used, but we -- we
14 disagree. Certain allegations that the Government has made as
15 to the funding of the psych report or the funding of previous
16 counsel, who is not myself, those were -- we set forth that
17 those were put on an American Express card and that those were
18 not paid out of illicit funds. So we didn't have any -- I
19 mean, the declaration was signed on April 19th. It was filed
20 this morning. So we didn't have the opportunity to further
21 pursue those statements that were being made, but we disagree
22 with them completely.

23 And also I would like to add that the potential
24 penalty in this case is not a legitimate basis for finding a
25 serious risk of flight.

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1 **THE COURT:** Is it not a consideration?

2 **MS. TIRINNANZI:** It's a consideration, but it's not
3 the legitimate basis for that. And in cases concerning risk
4 of flight, we've required more. *Freedman* (phonetic) states
5 that we've -- in cases concerning risk of flight, we have
6 required more than evidence of the commission of a serious
7 crime and the fact of a potentially long sentence to support
8 finding risk of flight.

9 Serious economic crime that generated great sums of
10 ill-gotten gains, evidence of strong foreign family or
11 business ties is necessary to detain a defendant. That's *U.S.*
12 *versus Giordano*. The Government has not presented any
13 evidence that the client intends to flee or has anywhere to
14 flee to. Going back to just the discussion of funds, that --
15 all of which that discussion is more suitable for a finder of
16 fact and once we actually have access to the discovery and --
17 which we believe and are aware of evidence that puts that into
18 context and disputes some of those statements as well.

19 And again, Your Honor, I'm not sure if I mentioned
20 it, but Mr. Beasley is -- is a nonviolent offender, and he has
21 no criminal history. And -- oh. Also, one more factor, he --
22 and this was also verified by Pretrial Services. He has a job
23 offer with a construction company. He actually has multiple
24 job offers, but that was the best offer. It's in a -- in an
25 office capacity, but it's been verified by Pretrial Services.

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1 That job includes the potential for receiving benefits,
2 including medical after 90 days, which Mr. Beasley needs due
3 to the fact that he still has bullets lodged inside of him
4 from when the FBI shot him. And so that is just one more
5 factor supporting his history and characteristics that release
6 is appropriate.

7 **THE COURT:** Thank you, Counsel.

8 **MS. TIRINNANZI:** Thank you.

9 **THE COURT:** Rebuttal.

10 **MR. SCHMALE:** Thank you, Your Honor.

11 I will be brief. First, on the point of missing
12 financial assets, defense counsel suggested that that \$7- to
13 \$10 million could be with any number of other individuals
14 associated with the scheme. But that \$7- to \$10 million we
15 understand from Mr. Winkler is limited to amounts that were
16 put into Mr. Beasley's IOLTA account and then, thereafter,
17 have been unaccounted for. This is paragraph 5 of his
18 declaration where he says: As receiver, I currently estimate
19 that \$7 million to \$10 million received by Mr. Beasley in his
20 IOLTA account as part of the alleged Ponzi scheme are
21 currently unaccounted for. So those are simply funds linked
22 directly to Mr. Beasley. I'm sure there are -- there's much
23 more than that that is unaccounted for when you're looking at
24 the -- the entire scheme as a whole.

25 Defense counsel has repeatedly claimed that the

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1 defendant was asking for medical attention. That's
2 contradicted by the transcript. It's in our brief. I don't
3 want to dwell too much on it but, I mean, some quotes here.
4 Quote, I do not want any medical attention. Quote, I'm not
5 coming out. I'm not coming out. When I come out, I'll be
6 dead. When asked why we didn't want medical attention, he
7 responded: Because I'm not -- I'm not coming out, first off.
8 I'm going -- and I'm not going to jail. I don't want medical.
9 I want to die.

10 So gives you a flavor.

11 On the suppression point, I know Your Honor
12 rightfully doesn't want to get into a potential suppression
13 motion at this stage, but I do just want to flag there are any
14 number of cases holding that pushing through an unlocked gate
15 and approaching the front door to a home is perfectly
16 reasonable and falls under the knock-and-talk exception. So I
17 don't in any way want to concede that point, and particularly
18 since the case defense primarily relies on this *Hardan v. Nye*
19 *County*. I note Your Honor -- this case was cited to
20 Your Honor in a previous instance, and Your Honor's response
21 was to reject it and say, quote, a decision by one judge in
22 this district is not binding on any other district judge and
23 does not constitute the rule of the law from this district.

24 **THE COURT:** That's actually just one of our local
25 rules.

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1 **MR. SCHMALE:** Yeah, you restated the local rule in
2 your --

3 **THE COURT:** Right.

4 **MR. SCHMALE:** Yes. That's right. Anyway, that
5 was -- it was on a slightly different point. But, you know, I
6 believe that case is distinguishable for a number of reasons,
7 too. It was a civil case context. It wasn't criminal. And
8 there law enforcement allegedly broke a lock on the gate
9 and/or jumped a fence. And here there's -- there's no sort of
10 dispute like that.

11 Defense counsel says that he's -- claims that he's
12 not suicidal, the defendant is not suicidal, and that there
13 isn't, quote, anything scientific suggesting he's suicidal. I
14 mean, I don't think we need anything scientific here. We have
15 repeated statements by the defendant himself that he is
16 suicidal. I don't think a retained expert just simply saying
17 something to the contrary is terribly helpful --

18 **THE COURT:** And I think really their position is he's
19 no longer suicidal.

20 **MR. SCHMALE:** Yes. Okay. I'll accept that. But I
21 think that is undermined by the medical records that show
22 there's a lot of volatility in his mental state. And for
23 purposes of whether he is suicidal at the moment is a very
24 different question from would he be suicidal if he were
25 released and then were called upon to self-surrender to serve

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1 a life sentence in prison.

2 And, Your Honor, I'm prepared to touch on the
3 pretrial report and/or Judge Ferenbach's discussion and ruling
4 to the extent that they're helpful to you --

5 **THE COURT:** It would be helpful for you to touch upon
6 the Pretrial Services report.

7 **MR. SCHMALE:** Sure. Pretrial Services --

8 **THE COURT:** The updated one.

9 **MR. SCHMALE:** Yes. That's right, Your Honor.

10 We don't think it is of much value here because it is
11 very limited in what information it considers. It does not
12 consider the circumstances of the offense in question. So our
13 understanding, based on discussions with Pretrial, is their
14 marching orders are to look at the offense -- and in this case
15 it's wire fraud -- and they don't look at the size of the
16 fraud, they don't look at the surrounding circumstances, they
17 don't look at the -- the full confession, the life in prison,
18 the armed standoff. And Judge Ferenbach, in his discussion,
19 acknowledged these limitations and noted that, you know, it's
20 the job of the Court to consider the nature and circumstances
21 of the offense and the weight of the evidence. And he -- I
22 believe he explicitly said, quote, they're not telling, you
23 know, me how to do my job. They're not telling the judge how
24 to do their job. So they're very cabined in what they look
25 at. And I think under our -- the facts of our case, it's

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1 not -- what they're allowed to look at is not terribly helpful
2 given that it doesn't look at the core issues that go to him
3 being a flight risk and a danger to the community, which is
4 the size of the -- the fraud here, the sentencing guidelines
5 range he's looking at, and the circumstances of the offense
6 that include this armed standoff with law enforcement.

7 And I would also add that the -- Pretrial Services,
8 they did not have access to these additional mental health
9 documentation that defense counsel provided in their response
10 where the mental health providers described the defendant as,
11 you know, quote, a train wreck, and that he was prone to
12 explode with anger. So I think those are relevant
13 considerations that weren't even in front of Pretrial when
14 they were looking at this in their report.

15 Unless Your Honor would like me to address more about
16 Judge Ferenbach's order, then I think --

17 **THE COURT:** I mean, you're here. Go ahead.

18 **MR. SCHMALE:** Okay. Thank you. I just want to be
19 clear that there have been two magistrate judges who have
20 looked at this case.

21 **THE COURT:** That's right. Judge Youchah --

22 **MR. SCHMALE:** That's right.

23 **THE COURT:** -- and Judge Ferenbach.

24 **MR. SCHMALE:** That's right.

25 And so Judge Youchah ordered that the defendant be

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1 detained, and Judge Ferenbach has ordered the defendant is to
2 be released. And it's our position that not a whole lot has
3 changed in the meantime and that, in effect, the Court here is
4 being asked to resolve a conflict between these two judges.

5 **THE COURT:** Right. What changed really was the
6 dismissal of the other charge, the assault on a federal
7 officer charge.

8 **MR. SCHMALE:** Yes.

9 **THE COURT:** Yes.

10 **MR. SCHMALE:** That did change. Now, what also
11 changed was the Ponzi scheme charge was brought. That charge
12 was not sitting around on the -- the time -- where the initial
13 charges were filed. The underlying conduct from the assault
14 on a federal officer charge, that's still there. But you're
15 right, the charges are not -- are not there. So that may have
16 also influenced the Pretrial Services report. But in terms of
17 the charges, they've only gotten more serious. They've gone
18 from charges that have a guideline range of -- I believe it's
19 in our brief of -- the assault on a federal officer was 40, 50
20 months, something like that. And now we're looking at a
21 guidelines range that is life in prison. So the offense has
22 only gotten far more serious in the intervening time.

23 I mean, Judge Youchah, you know, described the
24 defendant's conduct as frightening and of grave concern and
25 desperate acts, including bringing a gun to a front door where

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1 law enforcement was there. Judge Youchah noted there's no way
2 to stop guns from reappearing, whether through associates or
3 family or friends. And given the repeated statements
4 regarding willingness to take one's own life and the
5 indication that he's willing to shoot law enforcement cannot
6 be ameliorated. Judge Youchah further noted the defendant
7 knew it was law enforcement who came to his residence, came to
8 the door with a loaded gun, pointed the gun at his own head,
9 and waived the gun towards that law enforcement, and
10 barricaded in his home for four hours and had to be removed by
11 FBI SWAT. And the Court also found that defendant had
12 substantial financial resources at his disposable and faces a
13 lengthy jail sentence.

14 Judge Ferenbach's order was also based on what we
15 believe to be some statements of defense counsel that are
16 contradicted by the evidence. At the prior hearing defense
17 counsel suggested that the receiver's declaration showed that,
18 quote, there are no funds for Mr. Beasley to flee on. I mean,
19 as an initial matter, that's not in the initial declaration.
20 But to the extent that there was any ambiguity, the
21 supplemental declaration clarifies that there's \$7- to
22 \$10 million of unaccounted for money that the defendant could
23 use to flee.

24 Second, Judge Ferenbach was told by defense counsel,
25 quote, being detained has inhibited the defendant's ability to

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1 cooperate with the receiver. Again, the supplemental
2 declaration clarifies that, that this is not the case and he
3 has been fully able to cooperate.

4 And then Judge Ferenbach also did not have access to
5 the supplemental mental health records provided by defense
6 counsel in which he is described as a train wreck and which
7 is -- and he's depressed and his anger issues are apparent
8 where he will explode with anger at least towards his ex-wife.

9 A couple other points that -- Judge Ferenbach didn't
10 seem to appropriately consider the relevance of the suicide
11 risk. He noted that the statute -- quote, the statute doesn't
12 talk about danger to himself, suggesting that he did not
13 consider suicide risk to kind of fit within the legal
14 analysis. But I believe our briefing shows that there's ample
15 case law showing that the suicide risk at a minimum goes to
16 risk to nonappearance, and also there's additional case law
17 showing that, if a defendant is a potential danger to
18 themselves, then they can also be judged a danger to those
19 around him. So I don't believe Judge Ferenbach was -- was
20 considering that.

21 And just one final point. Judge Ferenbach suggested
22 that the defendant, quote, is in a frame of mind that's
23 different from when he lost it. But, again, we think that the
24 psychological evidence that has come out since then, which
25 I've repeated a few times already, that again belies that

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1 conclusion. That is additional evidence that Judge Ferenbach
2 did not have to consider at that time.

3 **THE COURT:** Thank you, Mr. Schmale.

4 **MR. SCHMALE:** Thank you.

5 **THE COURT:** All right. I want to thank both of you
6 for your fine briefing and your compelling presentations. I
7 also want to thank everybody who has come to the courthouse
8 today for this important hearing.

9 I've considered the factors under Title 18 United
10 States Code § 3142, which include the nature and circumstances
11 of the offense charged, the weight of the evidence against the
12 defendant, the history and characteristics of the defendant,
13 including his character, physical and mental condition, family
14 ties, employment, financial resources, length of residence in
15 the community, community ties, past conduct, history relating
16 to drug or alcohol abuse, criminal history, and record
17 concerning appearance at court proceedings and, secondly,
18 whether at the time of the current offense or arrest he was on
19 probation, parole, or other release pending trial, sentencing,
20 appeal, or completion of a sentence for an offense -- he was
21 not -- and the nature and seriousness of the danger to any
22 person or the community that would be posed by the defendant's
23 release.

24 When considering the record in light of these
25 factors, this is a difficult decision and a close call which I

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1 think is evidenced by the fact that we have two different
2 magistrate judges who looked at this situation and concluded
3 opposite.

4 Mr. Beasley has had a long professional career as an
5 attorney in this community. He has strong family ties here.
6 His ex-wife, children, and mother and stepfather all reside
7 here. If released, he could live with his mother. And
8 because his law license has been suspended, he can't work as a
9 lawyer, but he could secure alternate employment and has
10 options available to him for employment. Were he to be
11 released, he could be of great help to his mother. And he
12 doesn't have a passport. That's what the record shows with
13 respect to those nature-and-characteristic factors.

14 Other than one very notable incident, he doesn't have
15 a history of violence or any criminal history to speak of.
16 But it's this notable incident that so heavily weighs down the
17 other side of that release scale, of course.

18 The defendant is under indictment for a total of
19 eight counts of wire fraud and money laundering arising out of
20 an alleged \$50 million -- I'm sorry, \$500 million Ponzi scheme
21 with more than a thousand victims. That comes from the
22 indictment. Thus, the nature and the circumstances of the
23 offense are grave, and they put the defendant in a position of
24 shame and ridicule in the eyes of his community and his peers.
25 An admitted gambling problem complicated or perhaps

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1 contributed to this situation. And when this alleged scheme
2 came to light a little over a year ago, the result was an
3 armed standoff between the defendant and FBI agents which
4 resulted in the defendant being twice shot while he held a gun
5 with law enforcement at his door and then staying in his home
6 for several hours bleeding while on the phone with a
7 negotiator. As he held the gun, repeatedly stated that he was
8 going to take his own life, and confessed to details of this
9 alleged scheme before ultimately being removed from his home
10 by the SWAT team.

11 The transcript of the negotiations with the FBI at
12 Document 11-1 reflect that he was suicidal. I don't think
13 anyone disputes -- can reasonably dispute that at that time.
14 He had written letters to his family apologizing for his
15 actions, and he indicated he was planning to shoot himself.
16 He repeatedly stated that he would not allow himself to go to
17 jail, and he believed he would face life in jail and the
18 ridicule of his community. He expressed regret that the FBI
19 didn't manage to kill him, and the language they used as found
20 in that transcript can be fairly interpreted only one way:
21 The defendant was suicidal and had made the decision to die
22 instead of facing prison time.

23 And the evidence, particularly including the
24 statements that day, appear to weigh strongly and heavily
25 against him. I recognize that's one of the smaller factors in

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1 this analysis, but it's one that weighs strongly and heavily
2 against him.

3 Now, of course that was a year ago, and the
4 information and mental health opinions that the defense has
5 provided suggest that the defendant has maybe had a
6 cooling-off period and is no longer suicidal and has a more
7 positive outlook on life, particularly now that he's become a
8 new grandfather. And additionally, the FBI has confiscated
9 his firearm.

10 Although I recognize that those events on that
11 terrible day in March of last year were likely an aberration
12 in Mr. Beasley's life, the circumstances that led to those
13 events and his claimed desire to take his life at that time,
14 those continue to this day and they remain significant
15 stressors for Mr. Beasley.

16 So ultimately, when applying these facts to the
17 factors, I find by a preponderance of the evidence that no
18 condition or combination of conditions will reasonably assure
19 the appearance of the defendant as required. He's facing a
20 lengthy jail sentence for these crimes which carry a maximum
21 sentence of, as the Government tells us, 160 years in prison
22 and potentially life in prison -- imprisonment as he
23 recognizes and he certainly expressed to the FBI negotiator.
24 The circumstances of an armed confrontation with law
25 enforcement and a multi-hour armed standoff show by at least a

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1 preponderance that the defendant is a risk of nonappearance
2 because, as courts have recognized and as Government counsel
3 indicated, taking one's own life will assure nonappearance.
4 And these circumstances show a desire to evade accountability
5 for these crimes.

6 The defendant's repeated statements to the negotiator
7 that he had no intention of going to jail for these crimes
8 further supports an inclination to take steps to avoid
9 accountability. The strength of the evidence against him only
10 would provide further reason to flee if released. And
11 finally, it appears from the declaration of the receiver,
12 Receiver Winkler, that there may be hundreds of thousands of
13 dollars in cash or far more that is unaccounted for and this
14 could be used as a resource for flight.

15 I also find by clear and convincing evidence that no
16 condition or set of conditions that I can impose will
17 reasonably ensure the safety of others and the community.
18 These circumstances of an armed confrontation with law
19 enforcement and a multi-hour armed standoff also show by clear
20 and convincing evidence that the defendant is a danger to the
21 community because the involvement of guns in this way risk not
22 only his own life but the safety of law enforcement officers
23 and any anyone in the vicinity.

24 He indicated during that event that he lamented that
25 law enforcers merely shot and didn't kill him, and even if he

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1 doesn't shoot during the incident, his actions caused law
2 enforcement to open fire creating a danger to everyone
3 involved and anyone nearby.

4 I recognize that the Government dropped the assault
5 on a federal officer case, but I don't find that that changes
6 the calculus when the Ponzi scheme indictment came in the
7 meantime.

8 I acknowledge that the defense paints this situation
9 as one created entirely by the FBI agents' unannounced,
10 unlawful, and forceful intrusion into the defendant's home
11 without a warrant and that the defendant had no intention of
12 harming anyone. I make no statement and don't prejudge
13 anything that might come before me on a suppression motion,
14 but what I will say with respect to that is that the
15 defendant's statements to the negotiator belie that
16 characterization for my purposes today. And it's clear from
17 those statements that he intended to harm himself, and he had
18 a firearm creating a danger not just for himself but for law
19 enforcement and the community.

20 And although the defense suggests that Mr. Beasley is
21 in a better mental state now -- and I certainly think that
22 that's partially true but -- as evidenced by the mental health
23 opinions that they've provided. But even the defense's mental
24 health evidence also shows some volatility in his mental
25 state. And the weight of the reality here is that the

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1 defendant's situation has only gotten heavier. He's since
2 lost his wife. He's had his law license suspended and assets
3 frozen, and he's the subject of an SEC civil action pending in
4 this courthouse as well.

5 So in light of all of those considerations and those
6 factors, I grant the motion for review of the magistrate
7 judge's release order, and I order that the defendant be
8 detained pending trial and that the release order issued by
9 the magistrate judge is vacated.

10 Any questions or anything else I need to address?

11 **MR. SCHMALE:** Nothing from the Government. Thank
12 you, Your Honor.

13 **MS. TIRINNANZI:** No. Thank you, Your Honor.

14 **THE COURT:** All right. Thank you, everyone. We're
15 adjourned.

16 *(Proceedings adjourned at 4:07 p.m.)*

17 --o0o--

18 COURT REPORTER'S CERTIFICATE

19 I, AMBER M. McCLANE, Official Court Reporter, United
20 States District Court, District of Nevada, Las Vegas, Nevada,
do hereby certify that pursuant to 28 U.S.C. § 753 the
21 foregoing is a true, complete, and correct transcript of the
proceedings had in connection with the above-entitled matter.

22 DATED: 4/30/2023

23
24 /s/ Amber M. McClane
25 AMBER McCLANE, RPR, CRR, CCR #914